

OEA/Ser.L/V/II  
Doc. 148  
27 June 2022  
Original: English

**REPORT No. 145/22**  
**PETITION 563-13**  
REPORT ON ADMISSIBILITY

FABIAN SANTIAGO  
UNITED STATES OF AMERICA

Approved electronically by the Commission on June 27, 2022.

**Cite as:** IACHR, Report No. 145/22, Petition 563-13. Admissibility. Fabian Santiago. United States of America. June 27, 2022.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Fabian Santiago
<b>Alleged victim:</b>	Fabian Santiago
<b>Respondent State:</b>	United States of America
<b>Rights invoked:</b>	No provisions expressly invoked

**II. PROCEEDINGS BEFORE THE IACHR<sup>1</sup>**

<b>Filing of the petition:</b>	April 8, 2013
<b>Additional information received at the stage of initial review:</b>	Oct 22, 2013; Dec 22, 2015; and January 11, 2016
<b>Notification of the petition to the State:</b>	March 30, 2016
<b>State's first response:</b>	December 8, 2016
<b>Additional observations from the petitioner:</b>	May 17, 2019; October 13, 2020; February 8, 2021; March 1, 29 2021
<b>Additional observations from the State:</b>	Dec 23, 2016

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Declaration of the Rights and Duties of Man <sup>2</sup> (ratification of the OAS Charter on June 19, 1951)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and international <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles I (personal security), XVIII (fair trial), Article XXV (right to humane treatment); and XXVI (due process of law) of the American Declaration
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes and no in accordance with section VI
<b>Timeliness of the petition:</b>	Yes and no in accordance with section VI

**V. ALLEGED FACTS**

1. Fabian Santiago presents several claims of physical mistreatment and torture, as well as prison conditions during his incarceration in various facilities of the Illinois Department of Corrections ("IDOC"). By way of background, the petitioner was convicted in 1996 of murder, attempted murder, and aggravated battery with a firearm, and sentenced in an Illinois court to a total of 100 years in prison.

2. The petitioner makes six separate claims which are set forth below. For the most part, the petitioner alleges that he has exhausted domestic remedies with respect these claims or is awaiting resolution of domestic remedies initiated.

<sup>1</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>2</sup> Hereinafter "American Declaration."

*Claim # 1*

3. Between 2001 and 2002, the petitioner was allegedly subjected to physical mistreatment by other inmates and by prison guards while incarcerated at the Menard Correctional Center (CMM). According to the petitioner, in April 2001, he was sharing a cell with another inmate who subjected him to verbal abuse and threats of physical violence. Ultimately, the petitioner claims his cellmate provoked him into a physical confrontation, and that another inmate got involved and made physical threats to him. The petitioner claims that the altercation and the threats took place in the presence of two guards who did not intervene, and that the prison authorities subsequently placed him in segregation as a disciplinary measure; however, none of the other inmates were subjected to any disciplinary measures. He also submits that he was attacked again in 2002 by the same former cellmate, and that when he was about to defend himself, he was sprayed in the face with mace by a prison officer and thrown to the ground by another one; however, they did nothing to restrain the other inmate. The petitioner says that due to this incident he was punished with three more months in segregation with another cellmate who threatened him verbally, which he reported to the prison authorities; however, no action was taken. Ultimately, the petitioner claims that in or about June 2002, the same cellmate assaulted the petitioner resulting in injuries to the petitioner's face. He further states that said inmate was removed from the cell violently, but that no disciplinary action was taken against him; the petitioner states that he received no medical treatment for his injuries.

4. In July 2002, the petitioner filed a civil lawsuit in the U.S. Federal District Court against several IDOC employees regarding the events described above, alleging failure to protect him from assault, use of excessive force, failure to provide medical care, and other related claims. According to the record, after multiple hearings before the district court and the U.S. Federal Court of Appeals for the Seventh Circuit, litigation was ultimately resolved in favor of the defendants in or about December 21, 2010.

*Claim # 2*

5. According to the petitioner on July 18, 2003, he was assaulted at CMM by a prison officer, who punched him to the ground and then kicked him while he was down. The petitioner further alleges that the guard kicked him so violently in the stomach that he defecated on himself; he was then handcuffed, taken to a bathroom where the same guard again assaulted him with blows to the face and torso.

6. He states that on the same day as the assault, he was transferred to the Pontiac Correctional Center (PCC), where he was subjected to disciplinary proceedings relating to what had occurred at CMM. He alleges that he was charged with assaulting a prison guard and for disobeying a direct order, which resulted in a sanction of 15 months in segregation. The petitioner says that on or about July 24, 2003, he was assaulted by two other guards, who handcuffed him so tightly that it caused bleeding and lacerations to his wrists. He also submits that the guards yanked his arms through a hole in his cell door, which caused him much pain; and that that subsequently one of the guards pushed him on the floor of the cell. On July 25, 2003, he reported these assaults to the warden, who gave instructions to the internal affairs division to investigate the complaints. He submits that on his return from the warden's office, he was assaulted by another prison who threw him to the ground and threatened him for reporting the conduct of the other guards. On September 5, 2003, he was allegedly placed in a cell covered in feces and urine; he asked to be relocated, but without success.

7. According to the record, the petitioner initiated civil proceedings in July 2005 before the U.S. District Court in relation to the foregoing complaints. He states that up to the time of the filing of the petition, the matter was awaiting resolution before the U.S. Court of Appeals for the Seventh Circuit.

*Claim # 3*

8. The petitioner was incarcerated at PCC between July 2003 and November 2004, during which time he alleges the prison authorities interfered with, destroyed, or confiscated his mail. The record indicates that in or around December 2004 the petitioner initiated civil proceedings before the district court against the prison authorities, which were ultimately dismissed by the district court and the U.S. Court of Appeals for the Seventh Circuit. The petitioner holds that his appeal was dismissed on or about January 4, 2010, for failure to submit on a timely basis the appropriate documentation to allow him to proceed *in forma pauperis*.

*Claim # 4*

9. Since November 2004 the petitioner has been incarcerated at Stateville Correctional Center (SCC), where he complains that the conditions of detention are deplorable due to overcrowding and meals prepared in kitchens infested with rats and roaches; and that inmates were forced to rely on family to provide funds to purchase edible meals from the prison commissary. The petitioner says he filed several complaints with the prison authorities, but without any success; consequently, he filed a civil lawsuit before the district court against the prison authorities; according to the record, this lawsuit was filed in January 2005. The petitioner alleges that he was dissatisfied with his court-appointed lawyer; the district court appointed another lawyer, who refused to represent him. The district court appointed a third lawyer, but according to the petitioner this professional was a friend of one of the defendants. Ultimately, after three years, the district court dismissed the petitioner's claim for failure to prosecute. He appealed this ruling, but it was dismissed by the U.S. Court of Appeals for the Seventh Circuit on June 9, 2010.

*Claim # 5*

10. The petitioner alleges that in or about October 27, 2008, he was involved in a heated verbal confrontation with an SCC prison guard, who threatened to beat him. The guard allegedly brought false disciplinary charges against him, which resulted in the petitioner being placed in a segregation unit, where conditions were deplorable, including a cell infested with by rats and roaches, inedible food and a mattress stained with feces. The petitioner filed civil suit before the district court, which he says was ultimately settled on June 3, 2012. The petitioner does not specify the amount of the settlement but complains that it was less than the amount to which he was entitled.

*Claim # 6*

11. He further submits that in May 2010 there were hostilities between himself and his cellmate at SCC, which ultimately led to a physical altercation. The petitioner claims that, prior to this conflict, he had asked the prison authorities to be relocated, but that this was not done. He also alleges that he suffered injuries due to the altercation, including two black eyes, and bruises to his face; he says he filed various grievances regarding this situation, but no corrective action was taken. Consequently, he filed a federal civil rights action, which had not yet been resolved at the time of filing of the petition.

*Response by the State*

12. Generally, the State does not challenge the veracity of the allegations made in support of these claims. However, the State contends that the petition is inadmissible principally because of failure to exhaust domestic remedies; untimeliness; manifestly groundless claims; lack of jurisdiction of the IACHR by virtue of the so-called "fourth instance formula".

13. With respect to Claim # 1, the State indicates the petitioner filed a civil lawsuit in July 2002 in the U.S Federal District Court against various IDOC employees alleging use of excessive force against him and failure to protect him from assault, among others. The State indicates that the district court dismissed some of the claims, and that some others went to a jury trial. Ultimately, the jury found in favor of the defendants; the petitioner appealed to the U.S Court of Appeals for the Seventh District, which affirmed the district court in part, and reversed it in part; and the matter was remanded for a second jury trial before the district court,

which resulted in a verdict in favor of the defendants. This ultimate decision was made on December 21, 2010; the State submits that the petitioner did not take any steps to appeal it.

14. Regarding Claim # 2, the State notes that in July 2005, the petitioner filed a civil lawsuit in the U.S. federal court against various IDOC employees, where he alleged excessive force and cruel and unusual punishment due to cell conditions. According to the State, the district court initially granted summary judgment in favor of the defendants on some of the claims and remanded the other claims for trial before a jury. The jury found in favor of the defendants on these remaining claims, following which the petitioner appealed to the U.S. Court of Appeals for the Seventh Circuit. This court affirmed parts of the decision, and remanded others to the district court for further consideration. The matter was again placed before another jury trial, when the jury found in favor of the defendants on August 20, 2013; the State alleges that the petitioner did not appeal this decision.

15. As to Claim # 3, the State mentions that the petitioner filed a civil lawsuit before a district court, where he alleged that his correspondence had been intercepted, confiscated, or destroyed by IDOC employees. The district court granted summary judgment in favor of the defendants in September 2008. The State further indicates that the petitioner appealed to the U.S. Court of Appeals for the Seventh Circuit, who dismissed it on January 4, 2010, on procedural grounds, because he failed to pay the required fee, or file an asset affidavit to proceed *in forma pauperis*.

16. With respect to Claim # 4, the State recalls that the petitioner initiated a civil lawsuit before the district court with complaints which included overcrowding and unsanitary conditions. According to the State, the petitioner was provided with attorneys to help him prosecute the case, but he repeatedly asked for them to be removed. In June 2009, the district court dismissed the petitioner's claim for failure to set forth any timely and valid federal cause of action. The State indicates that the petitioner appealed this decision to the U.S. Court of Appeals for the Seventh Circuit, which was dismissed on June 9, 2010, on procedural grounds.

17. Regarding Claim # 5, the State notes that the civil lawsuit before the district court was based on physical threats by a prison guard, as well as segregation with dissatisfactory meals and a rodent and pest infestation. The State submits that the petitioner subsequently settled this lawsuit on June 3, 2012.

18. Regarding Claim # 6, the State indicates that the petitioner filed a lawsuit before the district court arising out of a physical altercation with his cellmate. The State submits that the petitioner subsequently settled the lawsuit on May 15, 2014, date in which the district court upheld the validity of the settlement and granted the petitioner's motion to dismiss the complaint. It is the view of the State that this development constitutes supervening information pursuant to Article 34(c) of the IACHR's Rules of Procedure.

19. The State notes that the petition was received on April 8, 2013, and that litigation initiated by the petitioner regarding Claim # 1 was completed on December 21, 2010; on Claim # 3, on January 4, 2010; on Claim # 4, on June 9, 2010; and on Claim # 5, it was settled on June 3, 2012. Accordingly, the State argues that none of these four claims were filed within the six-month period prescribed by the IACHR and are therefore inadmissible for untimeliness.

20. It also argues that the petitioner voluntarily reached settlements with respect to Claims # 5 and # 6, which were upheld by the district court; and that they should therefore be dismissed as manifestly groundless. Given the voluntary settlements, it argues that the petitioner has received a remedy; and that it cannot now be asserted that the State is in violation of his rights. It also submits that the IACHR should respect the agreements reached between the petitioner and domestic authorities and reject Claims # 5 and # 6 as manifestly groundless, and thus inadmissible.

21. The State contends that the petitioner failed to exhaust domestic remedies with respect to Claims # 1, # 2, # 3, and # 4. In this regard, it alleges that regarding Claims # 1 and # 2, the petitioner chose not to appeal following second jury verdicts. With respect to Claims # 3 and # 4, the State argues that the petitioner chose not to seek review by the U.S. Supreme Court following dismissals by the U.S. Court of Appeals

for the Seventh Circuit. In the absence of exhaustion of remedies by the petitioners, the State deems that these claims should be deemed inadmissible by the Inter-American Commission.

22. The State contends that the petition should be dismissed in its entirety because it violates the so-called “fourth instance formula”, since the claims have benefited from extensive review by domestic judicial courts. Further, the State contends that the petition before the IACHR reflects dissatisfaction by the petitioner with the outcome of the domestic proceedings and that the Inter-American Commission must decline to act as a court of fourth instance and to second-guess the legal and factual determinations of the national courts.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS**

23. The parties generally diverge on the issue of exhaustion of domestic remedies and timeliness with respect to the claims brought by the petitioner.

24. First, the IACHR notes that Claims # 1 and # 2 refer to physical abuse and torture of the petitioner by prison guards and inmates. The petitioner pursued civil actions before the domestic courts, both of which were dismissed in December 2010 and August 2013, respectively. As the Inter-American Commission has stated before, under international standards applicable to matters like this one, where serious human rights violations such as torture or physical mistreatment are alleged, the appropriate and effective remedy is precisely the filing and the undertaking of an effective criminal investigation aimed at the clarification of the facts and, if necessary, individualization and prosecution of those persons responsible. In matters such as the instant one, it is not necessary to exhaust civil action before resorting to the IACHR, since that remedy would not redress the claims made concerning the alleged physical mistreatment of the alleged victim.

25. According to the information available, it does not appear that the authorities who learned of the allegations of abuse in Claims # 1 and # 2 undertook the requisite criminal investigations. Consequently, the IACHR decides to apply the exception to the exhaustion of domestic remedies provided for in Article 31.2(c) of its Rules of Procedure. Having regard for the foregoing, with respect to Claims # 1 and # 2 the Inter-American Commission considers that the filing of the petition on April 8, 2013, was done within a reasonable time, pursuant to Article 32.2 of its Rules of Procedure.

26. The record shows that domestic litigation regarding Claim #3 concluded on January 4, 2010, with the dismissal of the petitioner’s appeal; and on June 9, 2010, with respect to Claim # 4. The petition was filed before the IACHR on April 8, 2013, well outside the six-month deadline provided for in Article 32.1 of its Rules of Procedure; the petitioner does not deny this chronology. Therefore, the Inter-American Commission finds that Claims #3 and #4 are inadmissible for failure to comply with the requisite of timeliness; accordingly, it is unnecessary to analyze the other admissibility requirements regarding such claims.

## **VII. COLORABLE CLAIM**

27. This petition includes multiple claims relating to alleged physical mistreatment, as well as prison conditions during his incarceration in various facilities of the Illinois Department of Corrections.

28. With respect to Claims # 1 and # 2, the Commission considers that the allegations regarding the physical abuse and torture of the alleged victim, as well as the failure of the State to act with due diligence or within a reasonable time to investigate and clarify the facts, are not manifestly unfounded characterize possible violations of the rights recognized by Articles I (personal security), XVIII (fair trial), Article XXV (right to humane treatment) and XXVI (due process of law) of the American Declaration.

29. As to Claims # 5 and # 6, these were concluded by a settlement agreement between the petitioner and the State. In this regard the IACHR wishes to reaffirm that regardless of the nature and legal effects the said agreement under domestic law, access by the victims to the IACHR is an entirely different matter, one governed by international law. Therefore, a petition cannot be, in principle, dismissed in the admissibility stage solely on the basis of a settlement or agreement concluded before domestic courts.

However, there are features of Claims # 5 and #6 that permit the Commission to make specific findings on the whether these claims amount to prima facie violations of the American Declaration. of these claims.

30. With regard to Claims # 5, while the petitioner complains that the settlement was inadequate, he gives no details or reasons for considering it so. In the absence of this information from the petitioner, the Inter-American Commission is unable to identify any colorable claim. Accordingly, the IACHR considers Claim # 5 to be inadmissible for failure to state facts that might constitute a violation of the American Declaration. Accordingly, IACHR considers Claim # 6 to be inadmissible for failure to state facts that might constitute a violation, pursuant to Article 34.a of its Rules of Procedure

31. Regarding Claim # 6, the record shows that the district court not only upheld the validity of the settlement on that date, but also granted the petitioner's motion to dismiss the complaint. Given that the petitioner himself ended the judicial proceedings, the IACHR is unable to identify any colorable claim. Based on available information, the Inter-American Commission considers that the petitioner has not provided sufficient evidence to indicate, prima facie, any violations of rights guaranteed by the American Declaration. Accordingly, the IACHR considers Claim # 6 to be inadmissible for failure to state facts that might constitute a violation, pursuant to Article 34.a of its Rules of Procedure.

### **VIII. DECISION**

1. To find the instant petition admissible in relation to Claims # 1 and # 2 above in relation to Articles I, XVIII, XXV, and XXVI of the American Declaration.

2. To find the instant petition inadmissible in relation to Claims # 3, # 4, # 5, and # 6 above.

3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 27<sup>th</sup> day of the month of June, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.